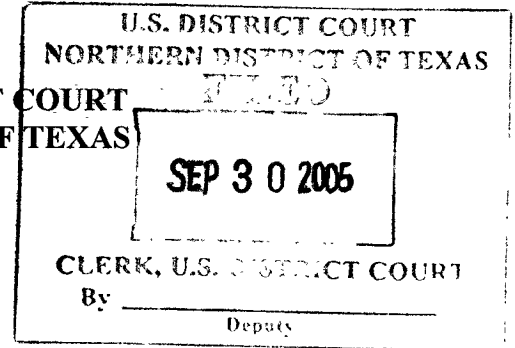


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION



JOHN SPIEGELBERG,
d/b/a RED RAIDER OUTFITTER
Plaintiff

v.

CHRISTOPHER J. TOELLE,
d/b/a RAIDERLAND BOOKSTORE
Defendant

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§

CIVIL ACTION No. 5-05CV0130-C

OPPOSED

**DEFENDANT'S MOTION FOR LEAVE
FOR HIS RESPONSE TO PLAINTIFF'S REPLY TO DEFENDANT'S MEMORANDUM
IN OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT IN VIEW
OF DEFENDANT'S UNFILED MOTION FOR ENLARGEMENT**

Defendant, CHRISTOPHER J. TOELLE, respectfully moves the Court for leave to consider his *RESPONSE TO PLAINTIFF'S REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT IN VIEW OF DEFENDANT'S UNFILED MOTION FOR ENLARGEMENT*, filed September 29, 2005, but not considered because it was filed without leave of court.

Defendant seeks leave to have the Court consider his Response to clarify misleading and erroneous allegations made by Plaintiff in his Reply to Defendant's Memorandum in Opposition to Plaintiff's Motion For Default. Particularly, Defendant's Response, if considered, will show that he is not committing a fraud on Plaintiff or this Court. As a result and in the interest of justice, Defendant respectfully urges the Court to grant his Motion For Leave so that the Court may consider his Response.

Respectfully submitted,

BYRD & ASSOCIATES

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Michael L. Byrd

State Bar No.: 03561450

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF CONFERENCE

This is to certify that the parties communicated by email on September 30, 2005, and Plaintiff's counsel indicated he opposed Defendant's Motion For Enlargement.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing **DEFENDANT'S MOTION FOR LEAVE FOR HIS RESPONSE TO PLAINTIFF'S REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT IN VIEW OF DEFENDANT'S UNFILED MOTION FOR ENLARGEMENT** was mailed via certified mail, return receipt requested to opposing counsel on this, the 30th day of September, 2005:

Via Certified Mail Return Receipt

Requested # 7005 0390 0005 1297 1717

Erik Osterrieder

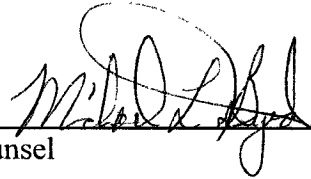
Schubert Osterrieder & Nickleson, PLLC

6013 Cannon Mtn., Dr., S14

Austin, Texas 78749

DEFENDANT'S MOTION FOR LEAVE FOR HIS RESPONSE TO PLAINTIFF'S REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT IN VIEW OF DEFENDANT'S UNFILED MOTION FOR ENLARGEMENT

Via Certified Mail Return Receipt
Requested # 7005 0390 0005 1297 1724
James L. Gorsuch
James L. Gorsuch, P.C.
4412 74th Street, Ste. B-102
Lubbock, Texas 79424



Of Counsel